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SUPREME COURT, U.S.

No. 81-2703

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

PEOPLE OF THE STATE OF ILLINOIS,

Petitioner,

v.

IVORY J. TOWNES,

Respondent.

BRIEF OF RESPONDENT OPPOSING PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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TABLE OF CONTENTS

	Page
Table of Contents	1
Table of Authorities	1
Question Presented	1
Statement of the Case	2
Reasons Why the Petition for Writ of Certiorari Should Not Be Granted	4
PETITIONER'S STATEMENT OF THE REASONS FOR GRANTING REVIEW MISCONSTRUES THE FACTUAL FINDINGS AND OPINIONS BELOW, SEEKS FOR THE FIRST TIME BEFORE THIS COURT TO RAISE AS AN ISSUE THAT WHICH IT NOW CLAIMS TO BE DETERMINATIVE OF THIS CAUSE, AND SERIOUSLY MISINTERPRETS THE DECISIONS OF THIS COURT AND OF THE FEDERAL COURTS OF APPEALS CITED IN PETITIONER'S APPLICATION.	4
Conclusion	6
Certificate of Service	7

TABLE OF AUTHORITIES

Dunaway v. New York, 442 U.S. 200 (1979)	4,5
People v. Townes, 91 Ill.2d 32, 435 N.E.2d 103 (1982)	4
People v. Townes, 94 Ill.App.3d 850, 419 N.E.2d 604, (4th Dist. 1981)	4
United States v. Mendenhall, 446 U.S. 544 (1980	5
United States v. Place, 660 F.2d 44 (1981).	5

IN THE

SUPREME COURT OF THE UNITED STATES

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OCTOBER TERM, 1981

No. 81-2307

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PEOPLE OF THE STATE OF ILLINOIS,

Petitioner,

v.

IVORY J. TOWNES,

Respondent.

BRIEF OF RESPONDENT OPPOSING PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

Respondent, Ivory J. Townes, respectfully prays that the Petition for Writ of Certiorari to review the judgment of the Supreme Court of Illinois entered in this case on April 16, 1982, be denied.

QUESTION PRESENTED

WHETHER THE INTERMEDIATE AND SUPREME APPELLATE COURTS OF ILLINOIS ERRED IN HOLDING THAT A DEFENDANT WHO, WITHOUT PROBABLE CAUSE, WAS ESCORTED FROM HIS HOME TO A POLICE STATION AND HELD FOR SOME THIRTEEN HOURS FOR PURPOSES OF INTERROGATION UNDER CIRCUMSTANCES RESEMBLING A TRADITIONAL ARREST,

AND UNDER WHICH A REASONABLE PERSON WOULD NOT HAVE BELIEVED THAT HE WAS FREE TO LEAVE, WAS ILLEGALLY SEIZED WITHIN THE MEANING OF THE FOURTH AMENDMENT BAN ON UNREASONABLE SEIZURES.

STATEMENT OF THE CASE

On the morning of January 6, 1980, at approximately 5:15, a neighbor of the complainant phoned the Danville, Illinois, Police Department to report that the complainant's apartment had been broken into and that she claimed to have been raped. The complainant, who later told police the assailant had been present at her apartment from 2:59 until 5:38 a.m., was able to give police only a very general description of the alleged assailant. She was unable to select the person who allegedly attacked her from mug shots exhibited by police. She did, however, point out several photographs of men whose size and features were similar to those of her alleged assailant.

After talking with complainant, police had no firm suspects. Instead they determined to seek out those men whose photographs complainant had pointed out, as well as certain others whose names they added to the possible suspect list based on past contacts. They interviewed at least four persons from the total list before reaching Respondent's name. Two of the initial interviews were, like Respondent's, conducted at the police department.

At approximately 9:10 a.m. on the day following the alleged attack, two Danville officers journeyed to Respondent's home, which was located two

towns south of Danville. The officers had no warrant for Respondent's arrest, nor probable cause to arrest him. Their investigation had not focused on any one individual. Respondent was considered one "possibility" among several. After identifying themselves, the officers asked Respondent to accompany them to the station for questioning, either in their vehicle or his. They told Respondent that an investigation was under way into an entry into a home and an assault on a woman. They did not tell him that he had a choice whether to go to the station. Respondent chose to ride with them, rather than to drive his own car.

At the station, police advised Respondent of his Miranda rights, took a written waiver, and began to interview him. Their interrogation continued all morning, with periodic breaks for liquid refreshments, food, and trips to the restroom, and finished at approximately 1:15 p.m. Respondent then was asked to accompany police to a local hospital for a physical examination, where he was taken at about 2:00 p.m. He was returned for further interrogation at approximately 4:00 p.m. At about 5:00 p.m., Respondent and four other persons of Respondent's approximate appearance and size were included in a line-up from which the complainant was unable to make an identification.

At approximately 6:00 p.m., having already spent some nine hours in police custody, Respondent admitted to knowing the complainant and to having had sexual relations with her. He denied the forcible nature of those relations and asserted a pre-existing intimate relationship. Police then questioned Respondent at length about his contacts with the complainant.

Interrogation finally ended at 10:10 p.m., approximately thirteen hours after police first appeared at Respondent's residence, and some 12 1/2 hours after Respondent first arrived at the station.

Respondent moved pre-trial to suppress his statements, which constituted the only evidence directly linking him to the alleged offense. In denying that motion, the trial court ruled not that Respondent had voluntarily accompanied police, but that the police "had probable cause to proceed as they did."

The Appellate Court unanimously reversed Townes' conviction, 94 Ill.App.3d 850, 419 N.E.2d 604 (4th Dis. 1981), noting that there are no substantial differences between the facts of this case and those in Dunaway v. New York, 442 U.S. 200 (1979). The Supreme Court of Illinois, by a 5-2 vote, sustained the Appellate Court, noting that "defendant's detention resembled a traditional arrest, and the circumstances indicate that a reasonable person would not have believed he was free to leave," thereby rejecting the State's argument on permissive appeal to that court that the defendant voluntarily cooperated with the investigation. People v. Townes, 91 Ill.2d 32, 435 N.E.2d 103 (1982).

REASONS WHY THE PETITION FOR WRIT OF CERTIORARI SHOULD NOT BE GRANTED

PETITIONER'S STATEMENT OF THE REASONS FOR GRANTING REVIEW MISCONSTRUES THE FACTUAL FINDINGS AND OPINIONS BELOW, SEEKS FOR THE FIRST TIME BEFORE THIS COURT TO RAISE AS AN ISSUE THAT WHICH IT NOW CLAIMS TO BE DETERMINATIVE OF THIS CAUSE, AND SERIOUSLY MISINTERPRETS THE DECISIONS OF THIS COURT AND OF THE FEDERAL COURTS OF APPEALS CITED IN PETITIONER'S APPLICATION.

Petitioner's statement of the issue presented by this case glosses over the very important distinction between custodial interrogations, which require probable cause, and brief, investigatory questioning on reasonable suspicion.

Both courts below found Dunaway v. New York controlling on the facts, the Appellate Court stating that it was "unable to discern any substantial distinction between Dunaway and the instant case", and the Illinois Supreme Court ruling that "defendant's detention resembled a traditional arrest, and the circumstances indicate that a reasonable person would not have believed he was free to leave." As noted in Judge Kaufman's dissenting opinion in United States v. Place, 660 F.2d 44 (1981), Dunaway establishes that custodial interrogation such as occurred in this case "must be supported by probable cause." Police in this case possessed neither probable cause nor anything but a generalized suspicion which had not focused on Respondent.

As correctly noted by the Illinois Supreme Court, this case is clearly distinguishable from United States v. Mendenhall, 446 U.S. 544 (1980). Nor is it like the federal appellate cases cited in Petitioner's brief, each of which, as well as Mendenhall, deal with brief investigatory encounters of persons fitting the DEA drug courier profile.

In reality, the decisions below are squarely in line with the controlling decisions of this court. Reversing the Illinois Supreme Court would necessitate this Court's rejecting the factual determinations reached below.

CONCLUSION

Since the decisions of the Illinois Appellate and Supreme Courts are thoroughly in line with controlling decisional law of this Court, since the petition for certiorari raises no issue of law not decided below in accordance with such controlling law, and since to reverse the decisions below, this Court would have to reach factual conclusions contrary to those below, the petition for writ of certiorari should be denied.

Respectfully submitted,

KENNITH W. BLAN, JR.
4 Vermilion Park Mall
Danville, IL 61832
(217) 443-5400
Counsel for Ivory J. Townes,
Respondent

CERTIFICATE OF SERVICE

I, Kennith W. Blan, Jr., hereby certify that one copy of the foregoing Brief of Respondent Opposing Petition for Writ of Certiorari to the Supreme Court of Illinois was served this 2nd day of July, 1982, by depositing the same in the United States Mail at Danville, Illinois, in an envelope securely sealed, postage prepaid, and legibly addressed to Mr. Michael B. Weinstein, Assistant Attorney General, 188 West Randolph Street, Suite 2200, Chicago, IL 60601, and to Mr. Robert J. Biderman and Mr. James K. Horstman, State's Attorney's Appellate Service Commission, Suite 909 - Myers Building, Springfield, IL 62701.

KENNITH W. BLAN, JR.

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October Term, 1981

PEOPLE OF THE STATE OF ILLINOIS,

Petitioner,

v.

Ivory J. Townes,

Respondent.

MOTION TO PROCEED IN FORMA PAUPERIS

Comes now Respondent, by counsel, pursuant to Rule 46, and prays that he be allowed to proceed in forma pauperis, attaches hereto his affidavit in the form prescribed by the Rules of Appellate Procedure, form 4, and shows that he has not previously sought leave to proceed in forma pauperis.

IVORY J. TOWNES, Respondent.

BY: BLAN LAW OFFICES

BY _____
One of His Attorneys

KENNITH W. BLAN, JR.
Blan Law Offices
Attorneys for Respondent
4 Vermilion Park Mall
Danville, IL 61832
(217) 443-5400

CERTIFICATE OF SERVICE

I, Kenńith W. Blan, Jr, hereby certify that one copy of the foregoing Motion to Proceed in Forma Pauperis was served this 2nd day of July, 1982, by depositing the same in the United States Mail at Danville, Illinois, in an envelope securely sealed, postage prepaid, and legibly addressed to Mr. Michael B. Weinstein, Assistant Attorney General, 188 West Randolph Street, Suite 2200, Chicago, IL 60601, and to Mr. Robert J. Biderman and Mr. James K. Horstman, State's Attorney's Appellate Service Commission, Suite 909 - Myers Building, Springfield, IL 62701.

KENNITH W. BLAN, JR.

No. 81-2307

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1981

People of the State of Illinois,

Petitioner,

v.

Ivory J. Townes

Respondent.

AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED IN FORMA PAUPERIS

STATE OF ILLINOIS)
) ss
COUNTY OF LIVINGSTON)

I, Ivory J. Townes, being first duly sworn, depose and say that I am the respondent in the above-entitled case; that in support of my motion to proceed on appeal without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I succeeded on appeal before the highest court of Illinois; and, that I am submitting herewith a brief in opposition to the State's Petition for Certiorari.

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of prosecuting the appeal are true.

1. Are you presently employed? No. Respondent is presently incarcerated. Prior to that time, Respondent was employed at various laborer jobs.

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source? No.

3. Do you own any cash or checking or savings account? No.

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? No.

5. List the persons who are dependent upon you for support and state your relationship to those persons. None

I understand that a false statement or answer to any question in this affidavit will subject me to penalties for perjury.

Ivory J. Townes
IVORY J. TOWNES

SUBSCRIBED and SWORN to before me this 23 day of June, 1982.

Notary Public

Let the applicant proceed without prepayment of costs or fees or the necessity of giving security therefor.

Justice